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**No. 164] NEW DELHI, THURSDAY, DECEMBER 11, 1952**


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Election Commission, India

NOTIFICATION

*New Delhi, the 11th December 1952*

**S.R.O. 2044.**—WHEREAS the election of Shri Maham Singh of Mawkhar, Shillong, as a member of the Legislative Assembly of Assam from the Cherra constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Horen Jones of Mawkhar, Shillong;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said Election Petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No 28 of 1952.

Present:—

Shri Ashutosh Das, Retd. District Judge, (West Bengal), Chairman,  
 Shri Umakanta Gohain, Retd. Addl. District Judge, (Assam),  
 Shri U. N. Bezbaruah, Barrister-at-law, Gauhati,  
 Members of the Election Tribunal, Assam.

*Dated 3rd December, 1952*

In the matter of a petition made under Section 81 of the Representation of the People Act, 1951, calling in question an election;

And

In the matter of (1) Horen Jones of Mawkhar, Shillong—Petitioner,

Vs.

- (1) Moham Sing of Mawkher, Shillong,
- (2) Welson Congman of Laban, Shillong,
- (3) C. D. Khoyllep, Jalaw, Shillong—Respondents,

And

In the matter of the improper rejection of the Petitioner's nomination for the Cherra Constituency of the United Khasi-Jaintia Hills District for the Assam Legislative Assembly.

Petitioner—represented by—

Shri S. Lahiri, Advocate,

Shri S. Alley, Advocate.

Respondent No. 1—represented by—

(1) Shri S. K. Ghose,

(2) Shri Lala B. K. De,

(3) Shri K. K. Chakravarty,

(4) Shri Purnendhu Chandra Choudhury, Advocate, Assam.

### JUDGMENT

The petition relates to election to the seat to the Assam Legislative Assembly from the Cherra Constituency of the United Khasi-Jaintia Hills District. There were 4 candidates standing for the election, whose nomination-papers had been, duly filed namely, the Petitioner and the 3 respondents. The Returning Officer, while accepting the nomination-papers of all the 3 respondents, rejected that of the petitioner, on the ground that he was disqualified under the Provision of Section 7, Clause (c) of the Representation of the People Act, 1951. The order of the Returning Officer is quoted below:—

"I have scrutinised the eligibility of the candidate, the proposer and the seconder, and I reject the nomination-paper for disqualification under Section 7 (c) of Act XXIII of 1951, on the following grounds:—

(1) Mr. Horen Jones, the candidate, is the Secretary and Manager of the Khasi-Jaintia Cloth and Yarn Whole-sale Co-operative Society, Ltd., Shillong, which acts as a procuring agent of textile for Government and Government derive financial benefit out of their dealings. Government get cess on their dealing.

(2) He applied for resignation retaining an honorary office with allowances which has not yet finalised".

Thereafter, the respondent No. 1 was returned at the poll as the successful candidate.

Now, the petitioner made the present petition urging that his nomination was improperly rejected, and that, this has materially affected the result of the election. Though the Returning Officer, in his order of rejection, quoted above, held the petitioner as disqualified on the ground of his holding the office of the Secretary and Manager under the above Society, this evidently was not alone sufficient for the purpose of disqualification. It must have been an office of profit that the petitioner was holding under the Society that could alone bring him under this disqualifying Clause. It was, however, admitted by the petitioner, when he was examined by the Chairman of the Tribunal on 5th June 1952, upon his pleadings, that as holding the above office under the Co-operative Society, he used to get remuneration, which made it an office of profit. That the petitioner had resigned this office at any time before he filed his nomination-paper, was nowhere stated in his pleadings, though it was a material fact, on which his case rested. In para. 2 of his election-petition, he indeed avers that he is still the Secretary and Manager of the Society. At the time of scrutiny of the nomination-paper, as appears from the order of the Returning Officer, he took the plea that he had applied for resignation of the above office of profit, but, as further noted in the above order, retaining an honorary office with allowance, which too had not yet been finalised. That such was really the case put forward by the petitioner before the Returning Officer, was nowhere controverted in the pleadings of the petitioner. Then, with regard to his above statement said to have been made before the Returning Officer, it is not quite understood how there could be an honorary office retained by him which would also bear some allowance, and if he was indeed to get some allowance for his office, that would make it an office of profit. It appears further from the above order of the Returning Officer that this question of resignation, which I should describe as a conditional one, had not yet been made final, and there will be the presumption of law of the old state of thing to have continued on the date the nomination-paper was filed by the petitioner, namely, that he still continued to hold an office of profit, as before, and that on the date of nomination. At any rate, the facts, referred to above, were very material facts, on which the case of the petitioner rested, and there was not a word pleaded of these in the election-petition about any change in the relation between the petitioner and the Society having taken place at any time before the nomination-paper was filed. However, an issue was inadvertently framed on this point as issue No. 4, to the effect whether the petitioner gave up his office under the above Society before he stood as a candidate and if this was so, may he be held to have been in law disqualified as

being in office under the Society on the date of his nomination. When the case was opened at the time of final hearing, an objection was taken on behalf of the respondent No. 1 to this issue, as it did not, in fact, arise from the pleadings. In order to meet this difficulty, the petitioner asked for permission to amend his pleadings, and it was contended on his behalf that such an amendment, though asked for at a very late stage, could not prejudice the other party, because, an issue had, in fact, been framed on this point, and the other party too had taken some steps for producing evidence to meet the question raised in this issue. It is well-settled that the Tribunal has no jurisdiction to amend the pleading set forth in an election-petition, not to speak of an amendment in respect of a material fact. Section 90 of the Representation of the People Act, 1951, makes the provision of the Code of Civil Procedure applicable to the conduct of the enquiry but not to the petition itself. In the case of an ordinary Civil suit, the Court is empowered to accept, reject or at any time amend the plaint. This is not so with an election-petition which under Section 81 can be accepted only by the Election Commission within a limited period. Indeed, such an amendment would be contrary to the whole tenor and spirit of the Act. We disallowed the above prayer for amendment proposed to be made on behalf of the petitioner, as per our order No. 15, dated 24th November 1952, which is made annexure 1, and struck out the above issue No. 4, as framed. Of course, in spite of our striking out this issue, we have to come to a finding that the petitioner did, in fact, continue to hold this office of profit under the Society at the relevant time, before we can justify the rejection of his nomination by the Returning Officer. We shall come to the point later on, though the same has not been seriously argued upon before us on behalf of the petitioner. The main contention of the petitioner, as set forth in his election-petition, is, in short, that the aforesaid Khasi-Jaintia Cloth & Yarn Wholesale Co-operative Society was not a Corporation in which the Government had any share of financial interest.

The case was contested by the returned candidate Moham Singh, respondent No. 1 only. On his behalf, besides the above view of the Returning Officer of the petitioner having been hit by Clause (e) of Section 7 being fully supported, a further plea is taken that the petitioner is disqualified also under the provision of Clause (d) under Section 7. In this connection, the facts pleaded by the respondent are that the Khyrim State Producers & Consumers Marketing Society, which is not a Co-operative Society, (which last fact is admitted) had contract for the supply of stationeries to the Civil Secretariat, Assam, at the relevant time, and the petitioner, being the Managing Director and also a share-holder of the above Society, is hit by the Provision of Clause (d) of Section 7.

The following were the issues framed in the case:—

#### *Issues*

1. Was the nomination of the petitioner improperly rejected by the Returning Officer; and if so, has the result of the election been materially affected thereby?
2. Was the petitioner really disqualified to stand as a candidate U/S. 7(e) of the R.P. Act, 1951, as held by the Returning Officer?
3. May the Government of Assam be held to have any "share of financial interest" in the Khasi-Jaintia Cloth and Yarn Wholesale Co-operative Society Ltd., Shillong?
4. If so, did the petitioner give up his office under the above Society before he stood as a candidate? And if this last question is answered in the affirmative, may he be held to have in law discontinued as being in office on the date of his nomination?
5. Is it open to the Respondent under law to take other ground than those taken in the order of the Returning Officer, to urge that the rejection of the Petitioner's nomination is valid in law?
6. Had the Khyrim State Producers and Consumers Marketing Society Ltd., had, or has any contract with the Government of Assam, as alleged in para. 7 of the W.S. of respondent No. 1?
7. Was the petitioner disqualified as under Section 7(d) R.P. Act, 1951, in view of his connection with the above Society?
8. Are the facts alleged in paras. 10—12 of the W.S. of respondent No. 1, true; if so, was the petitioner disqualified to stand as a candidate by reason of these?

Issues Nos. 1 to 3. We consider these issues together. That the Khasi-Jaintia Cloth and Yarn Wholesale Co-operative Society, Ltd., has been registered under the Co-operative Societies Act, is admitted which renders it a body corporate. Then, in view of the petitioner's clear admission that he had held an office under the Society on remuneration and, of there having been no pleading taken by him of any change having been effected in this state of thing before the date of nomination and in view of the other facts and circumstances, we have referred to above, it is to be presumed under law, there being no evidence to the contrary, that the petitioner continued in such an office or profit on the date of nomination. So, in respect of these issues, the only material point that is left to be considered at length, is whether the Government of Assam may be held to have any share or financial interest in the above Corporation. That the Government have no share in this Corporation is also undisputed. The point mooted is whether the Government has financial interest in the Corporation, and what would be the proper interpretation of this above Clause.

Before referring to the arguments advanced on either side, about the proper interpretation of the above Clause, let us first refer to the facts of the case, upon which the respondent relies in proving that the Government had indeed a financial interest in the above Society. First, it is undisputed that the Society, namely, the Khasi-Jaintia Cloth and Yarn Wholesale Co-operative Society, Ltd., had been acting as procuring Agents of textile goods for the Government of Assam from time to time, and at the relevant period, the Society was holding a permit for lifting a certain quota of such goods from the Mills in Bombay, under an agreement, which is marked Ext. 1. The agreement was executed on 6th October, 1951 between the Government of Assam and the Society, and it is undisputed that at the time of submitting the nomination-paper in the case, the agreement was still in force. Of course, from paragraph 5 of the agreement, we get it that all risks, liabilities and expenses from the point of purchase of goods (i.e. from the lifting of the quota from the Mills, by the Society) till delivery of the same to the appropriate parties in the respective Centres in the State, shall be borne by the Agent (i.e., the Society). This to our mind clearly indicates that the Government had no kind of financial responsibility in connection with this business and the Government is not at all concerned in the loss and profit of the same. Paragraph 7 of the agreement next provides that when the textiles arrive at the respective Centres, the Agent shall pay to the Government cess of 1 per cent. on the ex-Mill price of cloth, before taking delivery of the goods. Paragraph 6 of the agreement provides the margin of profit that the Agent is to get for the business.

Now, from these above facts, it has been argued on behalf of the respondent substantially as follows:

First, that though the Government may not have taken upon itself any risk and liability in respect of the business, they do indeed take a share of the proceeds of the business on realising cess at Rs. 1 per cent., and this would clearly show that they have a financial interest in the Society. In answer to this, it may be argued, and it has, in fact, been argued by the other side, that ostensibly the Government realises this cess for the purpose of meeting the cost of administration in running on the scheme of control of textiles, and this is not really realised by way of revenue or any income to accrue to the coffers of the State. So, really the Government do not share in the profit of the business. Though there is no evidence before us here to indicate the real object for which the Government realises cess on this business, even if we concede that the primary object of the levy is to meet the above cost of administration borne by the Government, we have to see how the position stands. It appears to us that even so, the Government is to be held as having a financial interest here in the business of the Society, in so far as by the levy of the above cess on the procuring Agents, it makes an arrangement to raise the necessary money to meet the administrative expenses of the control of textile, and that through the hands of the procuring Agents, which may appear to be an easy method of doing it. In absence of such an arrangement, the Government had had to meet the above cost of administration from other sources of its revenue. In this way, the Government may be regarded to have a financial interest in respect of the above business of procuring Agents, in so far as the above arrangement ensures to them a way of meeting the cost of administration of the control. It may further be noted that the amount of cess, thus derived by the Government, may vary, according to the quantity of the business done by the Agent, and after meeting all costs of administration, there may really be left a margin of net gain to the Government from this source. In view of these aspects of the matter, the Tribunal, after anxious consideration of the question, comes to the decision that the Government is to be regarded as having a financial interest in the business of the above Society.

It was then argued, on behalf of the petitioner, that it would not do to show that the Government has some financial interest in the business of the Agents, but the interest must be in the Corporation itself. To have an interest in the Corporation itself apart from its business is virtually tantamount to have a share in the Corporation which really falls within the preceding category of a "share" occurring in Clause (e) of Section 7, but we find no justification in putting such a limited construction upon the meaning of the Clause financial interest which is evidently of a more comprehensive import. It has been again argued that the Society, being a Co-operative Society, is excluded from the application of Clause (d) of Section 7 by virtue of the provision contained in Sub-section (2) of Section 8, and that in respect of any dealing arising out of a contract, entered between it and the Government, and from this, it is next argued, that Clause (e) of Section 7 should be so interpreted as to confine the Clause "financial interest" in its application to the Corporation itself and not to its business, arising out of contract with the Government. We do not appreciate the force of this reasoning. Clauses (d) and (e) relate to different conditions of disqualification and should be interpreted in their ordinary meaning, independently of each other.

It was also argued on behalf of the petitioner that the words "share" and "financial interest" occurring in Clause (e) of Section 7 should be read as really synonymous. According to the ordinary canon of interpretation of a Statute, each word of it should be ordinarily construed to convey a separate meaning, and it is to be presumed that there is no redundant expression used in a Statute. So, we cannot accept the above contention of the petitioner also. It was then argued on behalf of the petitioner that, at any rate, on following the principle of *ajudem generis*, the Clause "financial interest" is to be interpreted as an interest resembling in character to that indicated by the preceding word "share", and in this view of the case, a financial interest may be held to exist only in cases where, at least, the Government has anything financially at stake in connection with the business of the Corporation. In absence of anything to show that, the intention of the Legislature was to narrow down the meaning of the Clause "financial interest" as above, from what it is in its ordinary sense, we do not feel justified to do so.

Thus, on interpreting the Clause "financial interest", occurring in Clause (e) of Section 7 as above, the Tribunal takes the view that the appropriate Government had, in the case indeed, a financial interest in the Corporation in question, at the relevant time, and so, the petitioner was really disqualified under the above Clause, as holding an office of profit under the Corporation, at the same time.

On behalf of the respondent, two other facts were relied upon, as showing such a financial interest. We may at once say that we do not really find this grounds as holding good, and dismiss the same on short comments, as noted below:—

The first point urged, on behalf of the respondent, is that the Government is to be held to have a financial interest in the Corporation by reason of the fact that the latter had furnished security to the Government for due performance of the agreement, on failure of which, the security was liable to be forfeited to the Government. The security was obtained by the Government really for due performance of the agreement by the Agent, and as a safe-guard only, and though in certain event, this security might be forfeited to the Officers of the Government, that cannot really create a financial interest, in our view, as contemplated by Section 7 (e).

Next, it is proved that the Assam Co-operative Apex Bank, Ltd., is an institution which receives advances from the Government for the purpose of carrying on its business, and that too on a liberal scale. It is further in evidence that the Government exercise an effective control over the management of the business of the Bank. But it appears from the evidence of the Managing Director of the Bank, Shri R. P. Baruah (witness No. 2 for the respondent) who is indeed an employee of the Government, placed in charge of the control of the Bank's business, that the supreme authority of the Bank vests in its general Assembly and, it is the Board of Directors of the Bank, who decide to whom loans are to be granted by the Bank. It would thus appear that the Bank is not really a Government institution. Now, it is further in evidence that the Khasi-Jaintia Cloth & Yarn Wholesale Co-operative Society, Ltd., used to take loans from this Bank to carry on its business as the procuring Agent of textiles. The petitioner, in his deposition before the Tribunal, admits that the Society used to borrow money from the Bank from time to time against pledge of bales of cloth and yarn lifted by them from the Mills or the railway receipts in respect of the same. He further admits that at one time, the Society borrowed as much as Rs. 30,000 from this Bank, and then there is a statement of a rather indefinite character to the effect, that in 1951 there were debts to the Bank from the Society outstanding. It is then in evidence in the

deposition of Shri R. P. Baruah that against the advances made by the Government to the Bank, the Bank repledges goods that had been pledged to it by its different constituents, on different occasions. These are the relevant facts that have transpired in evidence in connection with the present point under consideration. From these facts, an argument was advanced, on behalf of the respondent that the Government may be held to have financial interest in the Khasi-Jaintia Cloth & Yarn Whole-sale Co-operative Society, Ltd., also in consideration of the fact, that some of its goods pledged by it with the Bank may have been repledged by the latter to the Government against advances made by the Government to the Bank. Even, if we concede that at the relevant time, there were goods of the Society, thus repledged to the Government by the Bank, that would not clearly show any financial interest of the Government in the business of the Society. The goods are repledged by the Bank to the Government in their interest as pawnees from its constituents and not in the interest of its pawners, and further there is nothing in the evidence to show that the Society was any party to such repledgement of its stock with the Government by the Bank, or that this was done with the knowledge of the Society. So, these above facts are really of no consequence here.

In the result, we answer all the issues Nos. 1 to 3 in favour of the respondent, and against the petitioner, and we do hold that, the petitioner did, as a matter of fact, hold an office of profit, at the time of his submitting the nomination-paper, under the Corporation in which the appropriate Government, namely, the Government of Assam, had financial interest, and so, we uphold the order of the Returning Officer, in rejecting the nomination of the petitioner.

Now, on behalf of the respondent, besides supporting the above order of the Returning Officer, in which he held the petitioner as disqualified under Clause (e) of Section 7, a further ground was taken in the defence here, that the petitioner was also disqualified as under Clause (d) of Section 7, as having been the Managing Director and also a share-holder in a Society, namely, the Khyrim State Producers & Consumers Marketing Society, Ltd., (which Society, as admitted, is not a Co-operative Society), and the same Society having been under a contract with the Government for the supply of stationery goods at the relevant time. Though it was not further absolutely necessary for us to enter into the issue, in view of our decision against the petitioner on issues Nos. 1 to 3, we proceed to give our decision on this point also, as it was very strenuously canvassed by the respondent before us, and a volume of evidence was produced by him in proof of this plea raised by him.

Now, with regard to this, the first point that arises for consideration, is whether it was open to the respondent under law to take any other ground to challenge the stand as a candidate, then what the Returning Officer himself did, and upon this, issue No. 5 was framed.

On this preliminary point, we hold that it is indeed permissible to the respondent to take such a new ground before the Tribunal, and there arises no question of estoppel against him in respect of it. In support of this view, we need only refer to one case, which was relied upon, on behalf of the respondent, namely, the case of Kamdar Khan versus Mian Ziauddin, of which we find a report in Sen's "Indian Election Cases" at page 722.

**Issues Nos. 6 & 7.**—It is admitted that the petitioner was both the Managing Director and a share-holder in the Khyrim State Producers & Consumers Marketing Society, Ltd., which again, as admitted, is not a Co-operative Society. From the evidence on record, it is further clear that the Society used occasionally to supply stationeries to the Civil Secretariat Assam, about the relevant time. The real question in controversy here resolves thus into whether this was done under a "contract for supply" of the goods, as contemplated by Clause (d) of Section 7. We have considered the whole evidence on the point before us, and the different contentions, urged on either side, and may at once say that the respondent has clearly failed to establish this part of his case, and the reasons for our decision are given below:—

This is a disabling Enactment we are dealing with here and it is well-settled that enactments of this kind must be strictly construed. In support of this, we refer to what was observed in the case of Rai Saheb Bhagwan Das, reported at page 12 of the "Reports of Indian Election Cases" by Jagat Narain, Vol. IV and to Rogers on "Elections", Vol. II, at page 20. The contract for the supply of the goods, referred to in Clause (d) of Section 7, must thus be construed strictly, and in our view, it must be a "contract", as defined in the Indian Contract Act,

the Indian Statute dealing with the subject of the law of Contract generally. Further, a contract of an abiding and subsisting character had here to be established by the respondent in order to succeed in his contention.

Now, on examining the evidence before us, it appears that the dealings, referred to by the respondent here, were really in the nature of casual supply of goods, according as the Government placed orders for the same with the Society from time to time, and, at most, on each occasion of such orders, there may have arisen a contractual relation between the parties, as and when the Society, as a matter of fact, accepted the offer to supply on each such particular occasion, and this contract was always of a transitory character, if indeed the transaction may, under the law, be termed a contract, which was, in each instance, terminated with the execution of the orders.

Under the provisions of Section 2 of the Indian Contract Act, in order to constitute a contract, there must first be the offer for consideration, and then an acceptance, and after both these requisites are fulfilled, there will be an agreement, and, lastly, only an agreement enforceable by law is a contract.

Let us now turn to an examination of the relevant evidence here, as we find. The case that the respondent wanted to make out here, was that the relevant offer was made by the Government to the Society by its letter Ext. (D), dated the 29th June, 1951, which had, indeed, been addressed to several local firms, calling upon each only to submit its quotations for certain stationery articles by the 6th July following and, further, noting that the price of only those articles that each particular firm, addressed to, was in a position to supply, should be quoted. It may at once be noted that there was, in this letter, no offer, on behalf of the Government to purchase, neither any statement about the quantity of goods wanted by the Government and the period for which the supply was to continue. These are the several factors which may be taken into consideration in characterising the transaction as one of a vague and indefinite character and none of an abiding nature. In reply to this above letter, however, the Society writes on the 6th July 1951 (Ext. B), which simply gives quotation of prices in respect of some articles, without further expressly committing itself to a promise to supply. About the price quoted also, after giving varying rates in respect of 3 items, the Society takes the care at the end of the letter to note that the price, quoted by it, would, in all occasions vary, according to the fluctuations of rates at the Centres of purchase. The law is well-settled that such quotation of price is not tantamount to an offer or acceptance, as understood in law, and suffice it to refer on the point to the following two cases, relied upon, on behalf of the petitioner:—

- (1) A.I.R., 1951, (Supreme Court), page 184; following the case of *Harvey versus Facy*;
- (2) A.I.R., 1942, (Privy Council), page 6.

It was, however, argued, on behalf of the respondent that the subsequent conduct of the Society in having, in fact, executed the orders of the Government from time to time, which was, at some frequent intervals, would go to establish a kind of implied contract, and the witness No. 1 for the respondent, Shri D. K. Sen stated that the Society, as a matter of fact, came to a "tacit understanding" in favour of such supply, as and when required by the Government. An implied contract may, of course, be inferred from the conduct of the parties, but upon the evidence here, it is not possible from the conduct and dealings, such as they were, that there was indeed any such implied contract of continued supply by the Society, and also, as and when demanded by the Government. It is pertinent further to refer here to one statement of the witness D. K. Sen, where he states that it was his sole option to place these orders for local supply with any firm he liked. If so, the business came to be essentially a matter of unitary obligation, which too detracts from its character as a legal contract. Indeed, the real position appears to be that the Assam Civil Secretariat was, really, short of supply at the time, as the Central Stationery Office, Calcutta, from where the Assam Civil Secretariat used to get its ordinary supply, was failing to meet its requirements in full, and in the circumstance, D. K. Sen as the Registrar of the Assam Civil Secretariat, was authorised by the Government to make local arrangement to supplement the supply so that there might arise no dead-lock in the work of the offices for want of stationeries, and the witness D. K. Sen, accordingly, proceeded to ensure such supply locally by addressing letters to several local firms. This Society in question had been supplying stationeries to the Assam Civil Secretariat from before, as appears from some documents of Exts. C series, and it was, among other firms, invited by the Registrar by his

letter of the 29th June to quote its prices. The Society gave its quotation and then, without there having been any further express agreement between the parties, the Society went on executing orders of supply from the Government from time to time. On these materials, it cannot, as already observed, be held that there was really a contract of an abiding and subsisting character, which extended till the date of submitting the nomination paper in the case, as might go to disqualify the petitioner under Clause (d) of Section 7. On behalf of the respondent, a certain piece of evidence was adduced showing that on 24th November, the Registrar placed such an order for supply of some stationeries with the Society, and the nomination-paper was submitted only 4 days after, i.e., on the 28th instant. Nothing appears to turn on these facts too. There is nothing to show that this order might not have been complied with before the 28th November, and the onus on the point was primarily on the respondent who pleads disqualification. Further, such contract, being only of an executory character, nothing would turn on whether the payment of prices of the goods, supplied on this particular order, might not have been paid before the date of nomination. Lastly, as there is further no contract of an abiding character proved, it had to be proved individually and separately that this particular order of the 24th November had, in fact, been accepted by the Society, of which too we find no evidence.

Finally, there is one more hurdle in the case which the respondent cannot get over. The agreement, as defined in the Indian Contract Act, must be one enforceable in law before it is converted into a contract in law. Article 299 of the Constitution of India required that such an agreement had to be expressed in writing as made by the Governor or somebody on his behalf, and as authorised by him, before it may be a contract to which the Government may be legally held to be a party. This is mandatory, as held in the case, reported in 51 C.W.N. 753. It was held in this case that when a Statute provides a particular method, by which a contract should be made, there must be compliance with the provision of the Statute. This is wanting in the present case altogether, and so, it has further to be held that there was no contract in law with the appropriate Government, for supply of stationeries.

In view of these above considerations, we decide the above issues Nos. 6 to 7 against the respondent.

**Issue No. 8.**—With regard to the facts, relied upon by the respondent in paragraphs 10 to 12 of his written-statement, the one referred to in paragraph 11 is already dealt with. The facts, referred to in other 2 paragraphs, were not urged at the time of hearing. This issue too is, therefore, answered against the respondent.

With regard to the **cost** of the case, we are of the view that each party should bear his own cost. The respondent took in the case a further ground, as under Clause (d) of Section 7, questioning the eligibility of the petitioner to stand as a candidate, and practically, the whole of his expenses in producing evidence, has been spent for the purpose of establishing this point, as also the point that the Khasi-Jaintia Cloth & Yarn Wholesale Co-operative Society was a Corporation in which the Government of Assam had financial interest by reason of the above Society's dealings with the Assam Co-operative Apex Bank, Ltd., and the respondent's case on both the points, which had been strenuously mooted, has failed. In consideration of this and other relevant factors in the case, we direct that the parties should bear their respective costs.

#### ORDER

The election-petition is dismissed. Parties to bear their respective cost in the case.

(Sd.) Umakanta Gohain,  
U. N. Bezbaruah,  
Members.  
3-12-52.

(Sd.) A DAS,  
Chairman,  
3-12-52.

#### ANNEXURE 1

15

24. 11. 52.

A preliminary point arises as to whether issue No. 4 was properly framed in the case. Heard both sides on the point. In para. 2 of the petition, the



petitioner clearly stated that he was still the Secretary and Manager of the Khasi-Jaintia Cloth & Yarn Wholesale Co-operative Society. In view of this clear statement, it does really appear that the above issue, framed in the case, did not really arise. On behalf of the petitioner, however, it is stated that it was by a mere accidental omission that a reference to his resignation from the office of the Secretary of the Society, which was, indeed, a fact, was not made in the petition, but at the same time, an issue was framed on the point, and he called for witnesses to prove his alleged resignation, and the other side too called some witnesses on the same point. In the circumstance, it is proved on behalf of the petitioner that this being a case of mere accidental omission in the pleading, this may be amended by adding that the petitioner had, in fact, resigned his office of the Secretary at the relevant time. We have thought over the matter and we are of the view that an amendment at this stage of the pleading on a material fact cannot be properly allowed. We have, therefore, no other alternative than to delete the issue No. 4.

(Sd.) Umakanta Gohain,  
U. N. Bezharuah,

Members.

(Sd.) A DAS,  
Chairman,  
24-11-52.

24-11-52.

[No. 19/28/52-Elec.III.]

P. S. SUBRAMANIAN,  
Officer on Special Duty.

